

Senate Study Bill 3058 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON SODDERS)

A BILL FOR

1 An Act providing for voidable commercial transactions and
2 including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 684.1, Code 2016, is amended to read as
2 follows:

3 **684.1 Definitions.**

4 As used in this chapter:

5 1. "*Affiliate*" means any of the following:

6 a. A person ~~who~~ that directly or indirectly owns, controls,
7 or holds with power to vote, twenty percent or more of the
8 outstanding voting securities of the debtor, other than
9 a person ~~who~~ that holds the securities as either of the
10 following:

11 (1) As a fiduciary or agent without sole discretionary power
12 to vote the securities.

13 (2) Solely to secure a debt, if the person has not in fact
14 exercised the power to vote.

15 b. A corporation twenty percent or more of whose outstanding
16 voting securities are directly or indirectly owned, controlled,
17 or held with power to vote, by the debtor or a person ~~who~~ that
18 directly or indirectly owns, controls, or holds with power
19 to vote, twenty percent or more of the outstanding voting
20 securities of the debtor, other than a person ~~who~~ that holds
21 the securities as either of the following:

22 (1) As a fiduciary or agent without sole discretionary power
23 to vote the securities.

24 (2) Solely to secure a debt, if the person has not in fact
25 exercised the power to vote.

26 c. A person whose business is operated by the debtor under
27 a lease or other agreement, or a person substantially all of
28 whose assets are controlled by the debtor.

29 d. A person ~~who~~ that operates the debtor's business under a
30 lease or other agreement or controls substantially all of the
31 debtor's assets.

32 2. "*Asset*" means property of a debtor, but does not include
33 any of the following:

34 a. Property to the extent it is encumbered by a valid lien.

35 b. Property to the extent it is generally exempt under

1 nonbankruptcy law.

2 *c.* An interest in property held in tenancy by the entireties
3 to the extent it is not subject to process by a creditor
4 holding a claim against only one tenant.

5 3. "Claim", except as used in "claim for relief", means
6 a right to payment, whether or not the right is reduced to
7 judgment, liquidated, unliquidated, fixed, contingent, matured,
8 unmatured, disputed, undisputed, legal, equitable, secured, or
9 unsecured.

10 4. "Creditor" means a person ~~who~~ that has a claim.

11 5. "Debt" means liability on a claim.

12 6. "Debtor" means a person ~~who~~ that is liable on a claim.

13 7. "Electronic" means relating to technology having
14 electrical, digital, magnetic, wireless, optical,
15 electromagnetic, or similar capabilities.

16 ~~7.~~ 8. "Insider" includes all of the following:

17 *a.* If the debtor is an individual, all of the following:

18 (1) A relative of the debtor or of a general partner of the
19 debtor.

20 (2) A partnership in which the debtor is a general partner.

21 (3) A general partner in a partnership described in
22 subparagraph (2).

23 (4) A corporation of which the debtor is a director,
24 officer, or person in control.

25 *b.* If the debtor is a corporation, all of the following:

26 (1) A director of the debtor.

27 (2) An officer of the debtor.

28 (3) A person in control of the debtor.

29 (4) A partnership in which the debtor is a general partner.

30 (5) A general partner in a partnership described in
31 subparagraph (4).

32 (6) A relative of a general partner, director, officer, or
33 person in control of the debtor.

34 *c.* If the debtor is a partnership, all of the following:

35 (1) A general partner in the debtor.

1 (2) A relative of a general partner in, or a general partner
2 of, or a person in control of the debtor.

3 (3) Another partnership in which the debtor is a general
4 partner.

5 (4) A general partner in a partnership described in
6 subparagraph (3).

7 (5) A person in control of the debtor.

8 *d.* An affiliate, or an insider of an affiliate as if the
9 affiliate were the debtor.

10 *e.* A managing agent of the debtor.

11 ~~8.~~ 9. "*Lien*" means a charge against or an interest in
12 property to secure payment of a debt or performance of an
13 obligation, and includes a security interest created by
14 agreement, a judicial lien obtained by legal or equitable
15 process or proceedings, a common-law lien, or a statutory lien.

16 10. "Organization" means a person other than an individual.

17 11. "Person" means an individual, estate, business
18 or nonprofit entity, public corporation, government or
19 governmental subdivision, agency, or instrumentality, or other
20 legal entity.

21 ~~9.~~ 12. "*Property*" means anything that may be the subject
22 of ownership.

23 13. "Record" means information that is inscribed on a
24 tangible medium or that is stored in an electronic or other
25 medium and is retrievable in perceivable form.

26 ~~10.~~ 14. "*Relative*" means an individual related by
27 consanguinity within the third degree as determined by the
28 common law, a spouse, or an individual related to a spouse
29 within the third degree as so determined, and includes an
30 individual in an adoptive relationship within the third degree.

31 15. "Sign" means, with present intent to authenticate or
32 adopt a record to do either of the following:

33 a. Execute or adopt a tangible symbol.

34 b. Attach to or logically associate with the record an
35 electronic symbol, sound, or process.

1 ~~11.~~ 16. "*Transfer*" means every mode, direct or indirect,
2 absolute or conditional, voluntary or involuntary, of disposing
3 of or parting with an asset or an interest in an asset, and
4 includes payment of money, release, lease, license, and
5 creation of a lien or other encumbrance.

6 ~~12.~~ 17. "*Valid lien*" means a lien that is effective against
7 the holder of a judicial lien subsequently obtained by legal or
8 equitable process or proceedings.

9 Sec. 2. Section 684.2, Code 2016, is amended to read as
10 follows:

11 **684.2 Insolvency.**

12 1. A debtor is insolvent if, at a fair valuation, the sum of
13 the debtor's debts is greater than all the sum of the debtor's
14 assets, ~~at a fair valuation~~.

15 2. A debtor ~~who~~ that is generally not paying the debtor's
16 debts as they become due other than as a result of a bona fide
17 dispute is presumed to be insolvent. The presumption imposes
18 on the party against which the presumption is directed the
19 burden of proving that the nonexistence of insolvency is more
20 probable than its existence.

21 ~~3. A partnership is insolvent under subsection 1 if the~~
22 ~~sum of the partnership's debts is greater than the aggregate,~~
23 ~~at a fair valuation, of all of the partnership's assets, and~~
24 ~~the sum of the excess of the value of each general partner's~~
25 ~~nonpartnership assets over the partner's nonpartnership debts.~~

26 ~~4.~~ 3. Assets under this section do not include property
27 that has been transferred, concealed, or removed with intent
28 to hinder, delay, or defraud creditors or that has been
29 transferred in a manner making the transfer voidable under this
30 chapter.

31 ~~5.~~ 4. Debts under this section do not include an obligation
32 to the extent it is secured by a valid lien on property of the
33 debtor not included as an asset.

34 Sec. 3. Section 684.4, Code 2016, is amended to read as
35 follows:

1 **684.4 ~~Transfers-fraudulent~~ Transfer or obligation voidable as**
2 **to present and or future creditors creditor.**

3 1. A transfer made or obligation incurred by a debtor is
4 ~~fraudulent~~ voidable as to a creditor, whether the creditor's
5 claim arose before or after the transfer was made or the
6 obligation was incurred, if the debtor made the transfer
7 or incurred the obligation under any of the following
8 circumstances:

9 a. With actual intent to hinder, delay, or defraud any
10 creditor of the debtor.

11 b. Without receiving a reasonably equivalent value in
12 exchange for the transfer or obligation, if either of the
13 following applies:

14 (1) The debtor was engaged or was about to engage in a
15 business or a transaction for which the remaining assets of the
16 debtor were unreasonably small in relation to the business or
17 transaction.

18 (2) The debtor intended to incur, or believed or reasonably
19 should have believed that the debtor would incur, debts beyond
20 the debtor's ability to pay as they became due.

21 2. In determining actual intent under [subsection 1](#),
22 paragraph "a", consideration may be given, among other factors,
23 to whether any or all of the following apply:

24 a. ~~Whether the~~ The transfer or obligation was to an insider.

25 b. ~~Whether the~~ The debtor retained possession or control of
26 the property transferred after the transfer.

27 c. ~~Whether the~~ The transfer or obligation was disclosed or
28 concealed.

29 d. ~~Whether, before~~ Before the transfer was made or
30 obligation was incurred, the debtor had been sued or threatened
31 with suit.

32 e. ~~Whether the~~ The transfer was of substantially all the
33 debtor's assets.

34 f. ~~Whether the~~ The debtor absconded.

35 g. ~~Whether the~~ The debtor removed or concealed assets.

1 ~~h. Whether the~~ The value of the consideration received by
2 the debtor was reasonably equivalent to the value of the asset
3 transferred or the amount of the obligation incurred.

4 ~~i. Whether the~~ The debtor was insolvent or became insolvent
5 shortly after the transfer was made or the obligation was
6 incurred.

7 ~~j. Whether the~~ The transfer occurred shortly before or
8 shortly after a substantial debt was incurred.

9 ~~k. Whether the~~ The debtor transferred the essential assets
10 of the business to a lienor ~~who~~ that transferred the assets to
11 an insider of the debtor.

12 3. A creditor making a claim for relief under subsection 1
13 has the burden of proving the elements of the claim for relief
14 by a preponderance of the evidence.

15 Sec. 4. Section 684.5, Code 2016, is amended to read as
16 follows:

17 **684.5 ~~Transfers fraudulent~~ Transfer or obligation voidable as**
18 **to present creditors ~~creditor~~.**

19 1. A transfer made or obligation incurred by a debtor is
20 ~~fraudulent~~ voidable as to a creditor whose claim arose before
21 the transfer was made or the obligation was incurred if the
22 debtor made the transfer or incurred the obligation without
23 receiving a reasonably equivalent value in exchange for the
24 transfer or obligation and the debtor was insolvent at that
25 time or the debtor became insolvent as a result of the transfer
26 or obligation.

27 2. A transfer made by a debtor is ~~fraudulent~~ voidable as
28 to a creditor whose claim arose before the transfer was made
29 if the transfer was made to an insider for an antecedent debt,
30 the debtor was insolvent at that time, and the insider had
31 reasonable cause to believe that the debtor was insolvent.

32 3. Subject to section 684.2, subsection 2, a creditor making
33 a claim for relief under subsection 1 or 2 has the burden of
34 proving the elements of the claim for relief by a preponderance
35 of the evidence.

1 Sec. 5. Section 684.6, subsection 1, paragraph a, Code 2016,
2 is amended to read as follows:

3 a. With respect to an asset that is real property other than
4 a fixture, but including the interest of a seller or purchaser
5 under a contract for the sale of the asset, when the transfer
6 is so far perfected that a good-faith purchaser of the asset
7 from the debtor against ~~whom~~ which applicable law permits the
8 transfer to be perfected cannot acquire an interest in the
9 asset that is superior to the interest of the transferee.

10 Sec. 6. Section 684.6, subsection 5, paragraph b, Code 2016,
11 is amended to read as follows:

12 b. If evidenced by a writing record, when the ~~writing~~
13 ~~executed record signed~~ by the obligor is delivered to or for
14 the benefit of the obligee.

15 Sec. 7. Section 684.7, subsection 1, paragraph b, Code 2016,
16 is amended to read as follows:

17 b. ~~A remedy by any special action available under this~~
18 ~~subtitle, including~~ An attachment or other provisional
19 remedy, against the asset transferred or other property of the
20 transferee if available under applicable law.

21 Sec. 8. Section 684.8, Code 2016, is amended to read as
22 follows:

23 **684.8 Defenses, liability, and protection of transferee or**
24 **obligee.**

25 1. A transfer or obligation is not voidable under section
26 684.7, subsection 1, paragraph "a", against a person ~~who~~ that
27 took in good faith and for a reasonably equivalent value given
28 the debtor or against any subsequent transferee or obligee.

29 2. To the extent a transfer is avoidable in an action by a
30 creditor under section 684.7, subsection 1, paragraph "a", all
31 of the following apply:

32 a. Except as otherwise provided in this section, ~~to the~~
33 ~~extent a transfer is voidable in an action by a creditor under~~
34 section 684.7, subsection 1, paragraph "a", the creditor may
35 recover judgment for the value of the asset transferred, as

1 adjusted under [subsection 3](#), or the amount necessary to satisfy
2 the creditor's claim, whichever is less. The judgment may be
3 entered against either of the following:

4 ~~a. (1)~~ The first transferee of the asset or the person for
5 whose benefit the transfer was made.

6 ~~b. (2)~~ ~~Any subsequent transferee~~ An immediate or mediate
7 transferee of the first transferee, other than a any of the
8 following:

9 (a) A good-faith transferee or obligee who that took for
10 value or from any subsequent transferee or obligee.

11 (b) An immediate or mediate good-faith transferee of a
12 person described in subparagraph division (a).

13 b. Recovery pursuant to section 684.7, subsection 1,
14 paragraph "a", or section 684.7, subsection 2, of or from the
15 asset transferred or its proceeds, by levy or otherwise, is
16 available only against a person described in paragraph "a",
17 subparagraph (1) or (2).

18 3. If the judgment under [subsection 2](#) is based upon the
19 value of the asset transferred, the judgment must be for an
20 amount equal to the value of the asset at the time of the
21 transfer, subject to adjustment as the equities may require.

22 4. Notwithstanding voidability of a transfer or an
23 obligation under [this chapter](#), a good-faith transferee or
24 obligee is entitled, to the extent of the value given the
25 debtor for the transfer or obligation, to any of the following:

26 a. A lien on or a right to retain ~~any~~ an interest in the
27 asset transferred.

28 b. Enforcement of ~~any~~ an obligation incurred.

29 c. A reduction in the amount of the liability on the
30 judgment.

31 5. A transfer is not voidable under section 684.4,
32 subsection 1, paragraph "b", or [section 684.5](#) if the transfer
33 results from either of the following:

34 a. Termination of a lease upon default by the debtor when
35 the termination is pursuant to the lease and applicable law.

1 **b. Enforcement of a security interest in compliance with**
2 **chapter 554, article 9, other than acceptance of collateral in**
3 **full or partial satisfaction of the obligation it secures.**

4 **6. A transfer is not voidable under section 684.5,**
5 **subsection 2, in any of the following circumstances:**

6 **a. To the extent the insider gave new value to or for the**
7 **benefit of the debtor after the transfer was made unless,**
8 **except to the extent the new value was secured by a valid lien.**

9 **b. If made in the ordinary course of business or financial**
10 **affairs of the debtor and the insider.**

11 **c. If made pursuant to a good-faith effort to rehabilitate**
12 **the debtor and the transfer secured present value given for**
13 **that purpose as well as an antecedent debt of the debtor.**

14 **7. The burden of proving matters referred to in this section**
15 **is determined according to the following:**

16 **a. A party that seeks to invoke subsection 1, 4, 5, or 6,**
17 **has the burden of proving the applicability of that subsection.**

18 **b. Except as otherwise provided in paragraphs "c" and "d",**
19 **the creditor has the burden of proving each applicable element**
20 **of subsection 2 or 3.**

21 **c. The transferee has the burden of proving the**
22 **applicability to the transferee of subsection 2, paragraph "a",**
23 **subparagraph (2), subparagraph division (a) or (b).**

24 **d. A party that seeks adjustment under subsection 3 has the**
25 **burden of proving the adjustment.**

26 **8. The standard of proof required to establish matters**
27 **referred to in this section is preponderance of the evidence.**

28 **Sec. 9. Section 684.9, Code 2016, is amended to read as**
29 **follows:**

30 **684.9 Extinguishment of ~~cause of action~~ claim for relief.**

31 **A ~~cause of action~~ claim for relief with respect to a**
32 **fraudulent transfer or obligation under this chapter is**
33 **extinguished unless action is brought as follows:**

34 **1. Under section 684.4, subsection 1, paragraph "a", within**
35 **five not later than four** years after the transfer was made or

1 the obligation was incurred or, if later, ~~within~~ not later
2 than one year after the transfer or obligation was or could
3 reasonably have been discovered by the claimant.

4 2. Under section 684.4, subsection 1, paragraph "b",
5 or section 684.5, subsection 1, ~~within five~~ not later than
6 four years after the transfer was made or the obligation was
7 incurred.

8 3. Under section 684.5, subsection 2, ~~within~~ not later than
9 one year after the transfer was made ~~or the obligation was~~
10 ~~incurred~~.

11 Sec. 10. NEW SECTION. 684.9A Governing law.

12 1. In this section, a debtor's location is determined as
13 follows:

14 a. A debtor who is an individual is located at the
15 individual's principal residence.

16 b. A debtor that is an organization and has only one place
17 of business is located at its place of business.

18 c. A debtor that is an organization and has more than one
19 place of business is located at its chief executive office.

20 2. A claim for relief in the nature of a claim for relief
21 under this chapter is governed by the local law of the
22 jurisdiction in which the debtor is located when the transfer
23 is made or the obligation is incurred.

24 Sec. 11. NEW SECTION. 684.9B Application to series
25 organization.

26 1. As used in this section:

27 a. "*Protected series*" means an arrangement, however
28 denominated, created by a series organization that, pursuant to
29 the law under which the series organization is organized, has
30 the characteristics set forth in paragraph "b".

31 b. "*Series organization*" means an organization that,
32 pursuant to the law under which it is organized, has the
33 following characteristics:

34 (1) The organic record of the organization provides for
35 creation by the organization of one or more protected series,

1 however denominated, with respect to specified property of
2 the organization, and for records to be maintained for each
3 protected series that identify the property of or associated
4 with the protected series.

5 (2) Debt incurred or existing with respect to the activities
6 of, or property of or associated with, a particular protected
7 series is enforceable against the property of or associated
8 with the protected series only, and not against the property of
9 or associated with the organization or other protected series
10 of the organization.

11 (3) Debt incurred or existing with respect to the activities
12 or property of the organization is enforceable against the
13 property of the organization only, and not against the property
14 of or associated with a protected series of the organization.

15 2. A series organization and each protected series of the
16 organization is a separate person for purposes of this chapter,
17 even if for other purposes a protected series is not a person
18 separate from the organization or other protected series of the
19 organization.

20 Sec. 12. NEW SECTION. 684.9C Relation to Electronic
21 Signatures in Global and National Commerce Act.

22 This chapter modifies, limits, or supersedes the Electronic
23 Signatures in Global and National Commerce Act, 15 U.S.C. §7001
24 et seq., but does not modify, limit, or supersede section
25 101(c) of that Act, 15 U.S.C. §7001(c), or authorize electronic
26 delivery of any of the notices described in section 103(b) of
27 that Act, 15 U.S.C. §7003(b).

28 Sec. 13. Section 684.12, Code 2016, is amended to read as
29 follows:

30 **684.12 Short title.**

31 This chapter ~~may be cited~~, which was formerly cited as the
32 "Uniform Fraudulent Transfer Act." Act", may be cited as the
33 "Iowa Uniform Voidable Transactions Act".

34 Sec. 14. CODE EDITOR DIRECTIVE.

35 1. The Code editor is directed to make the following

1 transfers:

2 a. Section 684.9A, as enacted in this Act, to section
3 684.10.

4 b. Section 684.9B, as enacted in this Act, to section
5 684.11.

6 c. Section 684.9C, as enacted in this Act, to section
7 684.14.

8 d. Section 684.10 is transferred to section 684.12.

9 e. Section 684.11 is transferred to section 684.13.

10 f. Section 684.12, as amended in this Act, to section
11 684.15.

12 2. The Code editor is directed to correct internal
13 references in the Code and in any enacted legislation as
14 necessary due to the enactment of this section.

15 Sec. 15. APPLICABILITY.

16 1. a. This Act applies to a transfer made or an obligation
17 incurred on or after the effective date of this Act.

18 b. This Act does not apply to a transfer made or an
19 obligation incurred prior to the effective date of this Act.

20 2. For purposes of this section, a transfer is made and an
21 obligation is incurred at the time provided in section 684.6.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 GENERAL. This bill amends Code chapter 684 referred to
26 as the "Uniform Fraudulent Transfer Act" as approved by the
27 national conference of commissioners on uniform state laws.
28 The law concerns an avoidance action brought by a creditor
29 (plaintiff) to set aside (void) a transfer made or obligation
30 incurred by an insolvent debtor to a third-party transferee
31 (defendant) including as part of a bankruptcy proceeding.
32 Consequently, the creditor seeks that the value of the property
33 be returned to the debtor or the debtor's bankruptcy estate.

34 MODEL ACT. The bill is based on revisions to that Act
35 approved by the commissioners in 2014. The bill replaces the

1 term "fraudulent transfer" with the broader term "voidable
2 transaction" and changes the name of the Code chapter to the
3 "Iowa Uniform Voidable Transactions Act" (Code section 684.12).

4 EXTINGUISHING OF CLAIM. The bill changes a current Iowa
5 law that extinguishes a claim after five years (Code section
6 684.9). The bill adopts the model Act's four-year limitation.

7 RECORDS. The bill replaces the term "writing" with "record"
8 and provides that a "record" may be in an electronic format
9 (Code section 684.1). Currently, an obligation is incurred
10 when it is made orally or if evidenced by a writing (Code
11 section 684.6).

12 INSOLVENCY. Generally, a debtor is insolvent if the sum
13 of the debtor's debts is more than the sum of debtor's assets
14 (Code section 684.2). The bill provides that such debts do
15 not include those subject to a bona fide dispute. It also
16 eliminates special treatment accorded to partnerships by
17 providing that the aggregate net worth of the general partners
18 is no longer to be added to the partnership's assets.

19 UNIFORM COMMERCIAL CODE — ARTICLE 9 TRANSACTIONS. The bill
20 provides that a transfer may be voidable even if the transferee
21 is also a secured creditor under Article 9 of the Uniform
22 Commercial Code (Code chapter 554). The secured creditor must
23 receive collateral for partial or full satisfaction of the
24 obligation and the transfer must occur without public sale or
25 judicial foreclosure (Code section 684.8).

26 ORGANIZATIONS AND SERIES. The bill adds the term
27 "organization" which is defined to mean a "person" other than
28 an individual (Code section 684.1). It also provides that an
29 organization and separate legal components of that organization
30 referred to as a "series" may each be treated as a separate
31 person unconnected to an avoidance action (new Code section
32 684.9B). In order to be considered a separate person, the
33 organization or series must be created in the same organic
34 record (e.g., articles of incorporation), and the debt must be
35 enforceable against the activities or property associated with

1 the organization or series and not another component.

2 PROCEDURAL RULES. The bill provides that a rebuttable
3 presumption exists that a debtor is insolvent if the debtor
4 fails to pay debts as they become due. It also provides that
5 a creditor has the burden of proving the elements of a claim
6 (Code section 684.5) and a transferee has the burden of proving
7 the elements of a defense (Code section 684.8). The standard
8 of proof is a preponderance of the evidence.

9 CHOICE OF LAW. The bill provides that an avoidance action is
10 governed by the jurisdiction in which the debtor was located
11 when the transfer was made or obligation incurred (new Code
12 section 684.9A). If the debtor is an individual, the location
13 is the debtor's principal residence and if the debtor is an
14 organization, the location is the debtor's place of business or
15 chief executive office.

16 ELECTRONIC SIGNATURES AND GLOBAL AND NATIONAL COMMERCE ACT.
17 The bill provides that even though it modifies, limits, or
18 supersedes the federal Electronic Signatures in Global and
19 National Commerce Act, it does not affect federal law relating
20 to consumer disclosures through electronic means or exempt
21 certain judicial notices affecting consumer interests (new Code
22 section 684.9C).

23 CODE EDITOR DIRECTIVE. The bill directs the Code editor to
24 transfer existing, amended, and new Code sections within Code
25 chapter 684 in a manner that corresponds with the numbering
26 system approved by the national conference of commissioners on
27 uniform state laws.

28 APPLICABILITY. The bill applies to transfers and
29 obligations incurred on or after the effective date of the
30 bill.